

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

3. The petitioner applied for Medicaid benefits in March of 2000 and a decision was made in May of 2000 by PATH's disability determination service. At that time PATH agreed

that the petitioner's condition was severe and that she was unable to work due to: "moderate" restrictions in her ability to carry out activities of daily living; "marked" difficulties in her social functioning ability; "frequent" deficiencies of concentration, persistence or pace resulting in failure to complete tasks in a timely manner; and at least two episodes of decompensation in a work setting. She was determined to be presently disabled based on meeting the severity level in the listings at paragraph B of 12.02 (ADHD), 12.04 (Affective Disorders), 12.06 (Anxiety-Related Disorders) and 12.08 (Personality Disorders). The petitioner's physical problems were not considered a cause of inability to work.

3. PATH made the decision, however, to deny Medicaid to the petitioner based on a belief that the severity of the petitioner's condition would not last for twelve months because she would be improving through mental health counseling.¹ The petitioner appealed that decision in June of 2000.

4. The petitioner asked that her appeal be put on hold while she obtained additional medical evidence. In April of 2001, she submitted reports dated February 21, 2001 from her

¹ Throughout the long pendency of this appeal, the petitioner has been receiving VHAP benefits.

mental health care providers who had been treating her during the last year. Those health professionals confirmed that the petitioner continued to suffer restrictions from her various illnesses. They concluded that after one year the petitioner had: a "moderate" (30%) degree of restriction in her activities of daily living; a "moderate" (30%) degree of difficulty in maintaining social functioning; a "moderate" (30%) degree of deficiency with regard to concentration, persistence and pace; and that she had experienced one or two episodes of decompensation in which she was forced to withdraw from work. Her health care providers felt she was unable to work based on these restrictions. Of particular note was her inability to get along with co-workers and her inability to perform activities within a schedule.

5. Following this submission, the petitioner asked for additional time to present evidence of physical impairment. When nothing was received by February of 2002, the hearing officer set a thirty day deadline for further evidence and asked the Department to take a final position with regard to eligibility and to forward its medical evidence to the hearing officer. No further evidence was submitted by the petitioner. PATH submitted the medical evidence only after a second request in January of 2003.

ORDER

The decision of PATH is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

The disability of an individual age 18 or older is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, that can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than 12 months. To meet this definition, the applicant must have a severe impairment which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Persons who allege an inability to work based on the kind of mental impairments which the petitioner has must show that these impairments result in the following:

The required level of severity for these disorders is met when the requirements in both A and B are satisfied:

A. Medically documented persistence, either continuous or intermittent of one or more of the following²

. . .

B. Resulting in at least two of the following:

² "A" contains a listing of symptoms. There is no question that the petitioner exhibits symptoms which lead to the above diagnoses.

1. Marked restriction of activities of daily living;
or
2. Marked difficulties in maintaining social
functioning; or
3. Deficiencies of concentration, persistence or pace
resulting in frequent failure to complete tasks in
a timely manner (in work settings or elsewhere);
or
4. Repeated episodes of deterioration or
decompensation in work or work-like settings which
cause the individual to withdraw from that
situation or to experience exacerbation of signs
and symptoms (which may include deterioration of
adaptive behaviors).

20 C.F.R. 404, Subpart P, Appendix 1³
Listing 12.02 (Organic Disorders)
Listing 12.04 (Affective Disorders)
Listing 12.06 (Anxiety Related Disorders)
Listing 12.08 (Personality Disorders)

DDS initially found the petitioner to have two of these,
namely a "marked" inability with regard to number 2 and
"frequent" deficiencies with regard to number 3. Two is
sufficient to find a person disabled under the regulations.

³ 20 CFR 404 Subpart P, Appendix 1 was amended subsequent to the decision and submission of evidence in this case. Subpart B now reads the same with regard to paragraphs 1 and 2 but 3 and 4 have been amended to read: "(3) Deficiencies of concentration, persistence or pace, and (4) Repeated episodes of decompensation, each of extended duration." In addition, a new Subpart C has been added to 12.04 as an alternative to Subpart B which provides as follows: "medically documented history of a chronic affective disorder of at least two years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychological support, and one of the following: (1) Repeated episodes of decompensation, each of extended duration; or (2) A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in environment would be predicted to cause the individual to decompensate; or (3) Current history of one or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement."

The petitioner's own health professionals have found her, one year later, to have no further "marked"⁴ difficulties with regard to paragraphs 1 and 2 and no "repeated" episodes of decompensation with regard to paragraph 4. With regard to paragraph 3, they determined that the petitioner had "moderate" deficiencies. It is unclear whether they mean "frequent" by this rating but assuming that they do, the petitioner would only meet one of the indices for meeting the listings.

As the petitioner has put forth no evidence that her situation meets or equals these listings of mental impairment and no evidence of any physical impairment, it must be determined that PATH was correct in its assessment that she would improve within a year. As her condition did not remain severe for a year, she cannot be disabled under the regulation at M211.2 above and the Board must uphold the initial denial of eligibility. The petitioner should be aware that new standards have been set forth since her initial application and denial for determining disability for mental impairments. She is encouraged to reapply for Medicaid and to have her health providers address the standards in the new paragraph C

⁴ The term "moderate" is considered less severe than "marked" in the nomenclature of the listings

(set forth in footnote 3) to see if she might now meet the eligibility criteria.

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